

STATE OF MICHIGAN
COURT OF APPEALS

In re KOOS, Minors.

UNPUBLISHED
January 24, 2017

No. 333159
Genesee Circuit Court
Family Division
LC No. 15-131828-NA

Before: BECKERING, P.J., and SAWYER and SAAD, JJ.

PER CURIAM.

Respondent appeals as of right, challenging the trial court’s order holding that statutory grounds for exercising jurisdiction over him with respect to his two children had been established pursuant to MCL 712A.2(b)(1) and (2). We affirm.

Respondent has been incarcerated in prison since March 2013. He was convicted of two counts of operating a vehicle while intoxicated (OUIL), with an occupant under the age of 16 years, MCL 257.625(7)(a). The occupants were respondent’s two minor children. Respondent admits that he drove his vehicle while intoxicated, fell asleep, and was involved in an accident. The offense involved respondent’s second conviction for OUIL. At the time respondent began his incarceration, his two children were left in the custody of their mother.

In May 2015, petitioner filed a petition for court wardship over the children based on allegations of abuse and neglect while in their mother’s custody. The trial court assumed jurisdiction over the children pursuant to the mother’s plea of admission. The children initially were allowed to remain in the custody of their mother while she participated in services. Three months later, however, the children were removed from the mother’s custody and placed with their maternal grandparents. In December 2016, petitioner filed a supplemental petition seeking to add respondent as a party respondent, so that he too could be adjudicated and be subject to the trial court’s dispositional authority. At that time, respondent was still in prison and his earliest release date was December 9, 2016. Following a bench trial in April 2016, the trial court found that statutory grounds for jurisdiction had been established with respect to respondent pursuant to MCL 712A.2(b)(1) and (2).

Respondent argues on appeal that the trial court erred in finding a statutory basis for jurisdiction over the children with respect to him. We disagree. This Court reviews “the trial court’s decision to exercise jurisdiction [under MCL 712A.2] for clear error in light of the court’s findings of fact.” *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). “A finding

of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Id.* at 296-297. To the extent that respondent challenges the trial court's application of MCL 712A.2(b)(1) and (2), our review is de novo. *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014).

To exercise jurisdiction over a child, the trial court must find that a statutory basis for jurisdiction has been established by a preponderance of the evidence. *In re BZ*, 264 Mich App at 295; MCR 3.972(C)(1). The trial court found that grounds for jurisdiction were established with respect to respondent pursuant to MCL 712A.2(b)(1) and (2), which provide that a court has jurisdiction over a juvenile under 18 years of age under the following circumstances:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. As used in this sub-subdivision:

* * *

(B) "Without proper custody or guardianship" does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the juvenile with proper care and maintenance.

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

Respondent correctly observes that a parent's criminal status, standing alone, is insufficient for a court to assume jurisdiction over a child. *In re Curry*, 113 Mich App 821, 830; 318 NW2d 567 (1982). In this case, however, the trial court did not rely solely on respondent's criminal status to establish jurisdiction.

With regard to MCL 712A.2(b)(2), the trial court made clear that its reliance on this ground was not based on the mere fact of respondent's incarceration, but rather on the reasons for his incarceration. Respondent was serving two prison terms for OUIL convictions arising from his actions in driving a vehicle while intoxicated, with his two children in the vehicle. That incident resulted in an accident when respondent fell asleep while driving. In addition, respondent had a prior OUIL conviction at that time. These facts demonstrate that respondent's home environment would be an unfit place for the children to live due to drunkenness or criminality. Although respondent argues that his drunk-driving convictions do not show an intent to harm the children, MCL 712A.2(b)(2) does not require a parent's intent to harm. The focus of the statute is whether a parent's drunkenness or criminality renders a child's environment with that parent an unfit place to live. Respondent's history of driving while

intoxicated, including while his children are in his car, was sufficient to demonstrate that the children would be subject to an unfit home in respondent's custody.

We also disagree with respondent's argument that the trial court erred in finding that a statutory basis for jurisdiction was also established under MCL 712A.2(b)(1). Relying on subpart (B) of that subsection, respondent argues that, while incarcerated, he still could arrange for the children's proper care through another, and he was aware that the children were placed with their mother while he served his sentences. See *In re Sanders*, 495 Mich at 420-421 (an incarcerated parent can exercise the right to direct the care of his children while incarcerated). Respondent contends that he did not learn that the children's mother was not taking proper care of the children or that petitioner had removed the children from her care until well after this case was opened. He further complains that petitioner did not make more of an effort to keep him informed of the children's status when petitioner initially became involved and began working with the children's mother. Respondent asserts that he assumed that the children were being properly cared for when petitioner initially became involved, and he allowed the children to remain with their mother while she worked with petitioner to improve the children's home.

Respondent's arguments do not establish that the trial court erred in finding a basis for jurisdiction under MCL 712A.2(b)(1). That subsection allows a court to assume jurisdiction over a child who is without proper custody or guardianship. Although respondent asserts that under subsection (1)(B), the children were not without proper care or guardianship while placed with their mother, that is true only to the extent that she was able to and did provide the children with proper care and maintenance. Once she was found to be unfit, and thus unable to provide proper care and maintenance, the children's placement with her was no longer within the scope of subsection (1)(B). Because the children's mother was found to be unfit, and respondent remained incarcerated, the children were thereby left without proper custody or guardianship. Although the children were in placement with their maternal grandparents at the time the supplemental petition with respect to respondent was filed, that placement was ordered by the trial court after the children were removed from their mother's custody; respondent was not involved in that placement arrangement. In addition, although respondent offered some of his own relatives as possible placement options for the children, those placements were investigated and found to be unsuitable.

In sum, respondent has not established that the trial court's application of MCL 712A.2(b)(1)(B) or (2) was erroneous as a matter of law, and he has not shown that the trial court's factual findings in support of its exercise of jurisdiction are clearly erroneous.

Affirmed.

/s/ Jane M. Beckering
/s/ David H. Sawyer
/s/ Henry William Saad